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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XC360]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Floating Dry Dock Project at Naval Base San Diego in San Diego, California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments on proposed renewal incidental harassment authorization (IHA).

SUMMARY: NMFS received a request from the U.S. Navy (Navy) for the renewal of their currently active IHA to take marine mammals incidental to the Floating Dry Dock Project at Naval Base San Diego in San Diego, California. These activities are nearly identical to those covered in the current authorization. Pursuant to the Marine Mammal Protection Act (MMPA), prior to issuing the currently active IHA, NMFS requested comments on both the proposed IHA and the potential for renewing the initial authorization if certain requirements were satisfied. The renewal requirements have been satisfied, and NMFS is now providing an additional 15-day comment period to allow for any additional comments on the proposed renewal not previously provided during the initial 30-day comment period.

DATES: Comments and information must be received no later than **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, and should be submitted via email to *ITP.Fowler@noaa.gov*.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period.

Comments, including all attachments, must not exceed a 25-megabyte file size.

Attachments to comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act> without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Amy Fowler, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the original application, renewal request, and supporting documents (including NMFS *Federal Register* notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at:

<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, an incidental harassment authorization is issued.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as “mitigation measures”). Monitoring and reporting of such takings are also required. The meaning of key terms such as “take,” “harassment,” and “negligible impact” can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency’s regulations at 50 CFR 216.103.

NMFS’ regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed one year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a renewal for this activity, and requested public comment on a potential renewal under those circumstances.

Specifically, on a case-by-case basis, NMFS may issue a one-time one-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notice is planned or (2) the activities as described in the **Description of the Specified Activities and Anticipated Impacts** section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a renewal would allow for completion of the activities beyond that described in the **DATES** section of the notice of issuance of the initial IHA, provided all of the following conditions are met:

1. A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).
2. The request for renewal must include the following:
 - An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).
 - A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.
3. Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more

than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed renewal. A description of the renewal process may be found on our website at:

www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals. Any comments received on the potential renewal, along with relevant comments on the initial IHA, have been considered in the development of this proposed IHA renewal, and a summary of agency responses to applicable comments is included in this notice. NMFS will consider any additional public comments prior to making any final decision on the issuance of the requested renewal, and agency responses will be summarized in the final notice of our decision.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA renewal) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that

would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA renewal qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA renewal request.

History of Request

On May 27, 2020, NMFS issued an IHA to the Navy to take marine mammals incidental to in-water construction associated with the Floating Dry Dock Project at Naval Base San Diego in San Diego, California (85 FR 33129, June 1, 2020), effective from September 15, 2020 through September 14, 2021 (hereafter referred to as the 2020 IHA). On July 12, 2021, the Navy informed NMFS that the project had been delayed and none of the work identified in the initial IHA had occurred. The Navy requested an identical IHA be reissued with the effective dates 1 year later, in order to conduct the construction work that was analyzed and authorized through the previously issued IHA. On July 21, 2021, NMFS reissued the IHA to the Navy (86 FR 40468, July 28, 2021), effective from September 15, 2021 through September 14, 2022 (hereafter referred to as the initial IHA).

On July 15, 2022, the Navy notified NMFS that the project had been further delayed and none of the work identified in the initial IHA had occurred. In addition, the Navy had made minor changes to the project design plan, which would result in fewer proposed days of in-water construction than what was planned and analyzed in the 2020 IHA and initial IHA. As described in the **Description of the Specified Activities and Anticipated Impacts** section below, the activities for which incidental take is requested

are nearly identical to those covered in the initial IHA. In order to consider an IHA renewal, NMFS requires the applicant provide a preliminary monitoring report which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted. However, as no construction activities have been conducted, the Navy has no monitoring results to report. NMFS has preliminarily determined that the minor changes to the Navy's proposed pile driving activities would not affect the previous analyses, including the mitigation, monitoring, and reporting requirements, or take estimates (with the exception of reducing the amount of estimated take due to fewer days of construction). However, NMFS is requesting comments or additional information that may further inform our proposal to issue an IHA renewal to the Navy.

Description of the Specified Activities and Anticipated Impacts

The Navy proposes to construct a floating dry dock and associated pier-side access at Naval Base San Diego in the south-central portion of San Diego Bay. The floating dry dock is needed to ensure the Base's capability to conduct berth-side repair and maintenance of vessels. Implementation of the proposed project requires installation of two mooring dolphins, including vertical and angled structural piles, as well as fender piles, installation of a concrete ramp wharf and vehicle bridge, and dredging at the proposed floating dry dock location. The planned in-water construction covered in the initial IHA included installation of a maximum of 56 24-inch concrete piles using impact pile driving and high-pressure water jetting and a maximum of 10 24-inch steel pipe piles using impact and vibratory pile driving. The Navy's revised construction design plan

includes fewer 24-inch octagonal concrete piles and has eliminated all 24-inch steel pipe piles, while adding 18-inch square concrete piles, 18-inch octagonal concrete piles, and 14-inch steel H-piles (Table 1).

The anticipated impacts of the Navy's proposed activities are identical to those described in the initial IHA. As in the initial IHA, NMFS anticipates that only the U.S. stock of California sea lions (*Zalophus californianus*) may be taken by Level B harassment incidental to underwater noise resulting from in-water construction associated with the proposed activities.

The following documents are referenced in this notice and include important supporting information:

- **Federal Register** notice of proposed IHA for the 2020 IHA (85 FR 21179, April 16, 2020);
- **Federal Register** notice of final IHA for the 2020 IHA (85 FR 33129, June 1, 2020);
- **Federal Register** notice of reissued IHA for the initial IHA (86 FR 40468, July 28, 2021); and
- The Navy's 2020 IHA application, references cited, request for reissued IHA, and request for IHA renewal (available at www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities).

Detailed Description of the Activity

The Navy proposes to construct a floating dry dock and associated pier-side access in the south-central portion of San Diego Bay. The floating dry dock is needed in

order to address current and projected shortfall of dry dock space required for maintenance of the Pacific Fleet, and ensure the Naval Base San Diego's capability to conduct berth-side repair and maintenance of vessels. The proposed activities will allow for the emplacement and operation of a floating dry dock and associated pier-side access at Marine Group Boat Works (MGBW) Commercial Out Lease (COL) in the southern edge of Naval Base San Diego.

Up to 50 days of in-water pile driving were planned to occur under the initial IHA, which included installation of two mooring dolphins, including vertical and angled structural piles, as well as fender piles, and installation of a concrete ramp wharf and vehicle bridge. Two mooring dolphins would be located forward and aft of the proposed dry dock. The mooring dolphins would each be supported by up to 16 vertical 24-inch octagonal concrete piles (32 total) installed using impact pile driving and high-pressure water jetting. The aft mooring dolphin would also require approximately two 24-inch angled steel pipe piles. Up to eight additional 24-inch steel pipe piles are anticipated to be required for the forward and aft mooring dolphins. Cast-in-place reinforced concrete caps, 9.1 by 9.1 meter (m; 30 by 30 feet (ft)), would be installed at each mooring dolphin location. Grippers would be secured to the dolphins' concrete pile caps and used to hold the floating dry dock in position. Construction materials would be delivered by truck and the piles would be installed using a floating crane and an impact or vibratory pile driver aided by jetting methods. Fender piles associated with the aft mooring dolphin would consist of two steel pipe piles, 24-inches in diameter or less. All steel pipe piles would initially be installed using vibratory pile driving, followed by the use of an impact pile driver. The concrete ramp wharf and vehicle bridge would be supported by 24 24-inch

octagonal concrete piles installed using vibratory pile driving and high-pressure water jetting.

The modified construction design plan proposed to occur under the renewal IHA includes the installation of a total of 55 concrete piles and 10 steel H-piles. Five concrete piles would also be removed (via dead pull with no vibratory hammer required) and 12 steel template H-piles would be installed and subsequently removed using a vibratory hammer. A total of 77 piles would be installed (65 permanent, 12 temporary) which is greater than the total number of piles planned to be installed under the initial IHA (Table 1); however, the revised construction plan includes a reduction in diameter for the majority of piles as assessed in the initial IHA. Therefore, the modified construction plan is reasonably similar to the plan associated with the initial IHA. In addition, the Navy had estimated up to 50 days of in-water work would be required to complete the planned construction in the initial IHA, and the revised construction design would require only 40 days of construction, beginning in April 2023.

Table 1 -- Summary of Pile Driving Activities in Initial IHA Compared to Proposed Pile Driving Activities in IHA Renewal

Pile Type and Size	Pile Location	Number of Piles	
		Initial IHA	Proposed IHA Renewal
24-inch octagonal concrete	Forward and aft mooring dolphins	56	22 ^a
24-inch steel pipe	Forward and aft mooring dolphins	10	0
18-inch square concrete	Bulkhead	0	5 ^b
18-inch octagonal concrete	Ramp wharf and vehicle bridge	0	33
14-inch steel H-piles	Fender system on the offshore dolphin	0	10
14-inch template steel H-piles	Forward and aft mooring dolphins	0	12 ^c

Total piles installed	66	77 ^d
Total maximum days of work	50	40

^a This includes 11 piles per dolphin.

^b Removed using direct pull only.

^c Installed and subsequently removed. Includes 6 piles per dolphin.

^d Includes 65 permanent piles and 12 temporary piles.

A detailed description of the construction activities for which authorization of take is proposed here may be found in the **Federal Register** notice of proposed IHA for the 2020 IHA (85 FR 21179, April 16, 2020). With the exception of some reduced pile sizes and change from steel pipe piles to steel H-piles, the methods of pile driving (*i.e.*, vibratory and impact hammers, high-pressure water jetting) proposed in the IHA renewal are identical to those analyzed in the initial IHA. Similarly, the location and timing (*e.g.*, seasonality) are identical to those analyzed in the initial IHA. The proposed IHA renewal would be effective from the date of issuance through September 14, 2023.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the **Federal Register** notice of the proposed IHA for the 2020 IHA (85 FR 21179, April 16, 2020). NMFS has reviewed recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and preliminarily determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA.

Potential Effects on Marine Mammals and their Habitat

A description of the potential effects of the specified activity on marine mammals

and their habitat for the activities for which the authorization of take is proposed here may be found in the **Federal Register** notice of the proposed IHA for the 2020 IHA (85 FR 21179, April 16, 2020). The Navy's revised construction design plan includes some pile sizes and types that were not included in the initial IHA (*e.g.*, addition of 18-inch octagonal piles and 14-inch steel H-piles). However, the estimated sound source levels for the smaller (18-inch) concrete piles and the steel H-piles are lower than the source levels for the larger (24-inch) concrete piles and the 24-inch steel pipe piles, respectively, that were planned to be used during the activity described in the initial IHA (described in detail in the Navy's IHA renewal request, available at www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities).

Therefore, NMFS has preliminarily determined that the effects of the Navy's proposed installation of these new pile sizes and types on marine mammals and their habitat are the same as those analyzed in the initial IHA. Additionally, NMFS has reviewed recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the **Federal Register** notices for the proposed and final 2020 IHA (85 FR 21179, April 16, 2020; 85 FR 33129, June 1, 2020). The marine mammal occurrence data applicable to this authorization remain unchanged from the previously issued IHA. Similarly, the stocks taken, methods of take, and types of take remain unchanged from the previously issued IHA. The take calculation method also

remains the same as for the initial IHA, with the exception of fewer days of activity than what was described in the initial IHA.

The initial IHA estimated the distances to the Level B harassment thresholds for each pile size and type that was planned to be included in the initial construction plan. In the initial IHA, the largest Level B harassment zone resulted from vibratory installation of 24-inch steel pipe piles (1,848 m). However, since 24-inch steel pipe piles are no longer proposed to be installed, the largest Level B harassment zone now results from vibratory installation of 14-inch steel H-piles (398 m).

Based on the number of piles to be installed, the Navy estimates that the proposed pile driving activity would take 40 days (Table 1). As in the initial IHA, the Navy estimates four California sea lions could be present in the project area each day. Multiplication of the above estimate of animals per day (4) times the days of work (40) results in a proposed 160 incidents of Level B harassment take of California sea lions (Table 2). The Navy intends to avoid Level A harassment take by shutting down activities if a California sea lion approaches within 25 m of the project site, which encompasses all estimated Level A harassment zones. Therefore, no take by Level A harassment is anticipated or proposed to be authorized.

Table 2 -- Estimated Take Proposed for Authorization and Proportion of Stock Potentially Affected

Species	Days of activity	Estimated daily occurrence (# per day)	Proposed take by Level B harassment	Proposed take by Level A harassment	Percent of stock
California sea lion (<i>Zalophus californianus</i>) U.S. Stock	40	4	160	0	0.06

Description of Proposed Mitigation, Monitoring and Reporting Measures

The proposed mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the 2020 IHA (85 FR 33129, June 1, 2020), and the discussion of the least practicable adverse impact included in that document remains accurate. The following measures are proposed for this renewal:

Mitigation

The Navy would conduct briefings between construction supervisors and crews and the marine mammal monitoring team prior to the start of all pile driving activity, and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

For in-water heavy machinery work other than pile driving (*e.g.*, standard barges, *etc.*), if a marine mammal comes within 10 m, operations would cease and vessels would reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include the following activities: (1) movement of the barge to the pile location; or (2) positioning of the pile on the substrate via a crane (*i.e.*, stabbing the pile).

Though not required, Navy has indicated that in-water pile driving would only be conducted at least 30 minutes after sunrise and up to 30 minutes before sunset, when visual monitoring of marine mammals can be conducted.

For those marine mammals for which Level B harassment take has not been requested, in-water pile driving would shut down immediately if such species are observed within or entering the monitoring zone (*i.e.*, Level B harassment zone). If take

reaches the authorized limit for an authorized species, pile installation would be stopped as these species approach the Level B harassment zone to avoid additional take.

Establishment of Shutdown Zone for Level A Harassment - For all pile driving activities, the Navy would establish a shutdown zone. The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area).

Conservative shutdown zones of 25 m for impact and vibratory pile driving activities would be implemented for California sea lions. The placement of protected species observers (PSOs) during all pile driving activities (described in detail in the Monitoring section below) would ensure shutdown zones are visible.

Establishment of Monitoring Zones for Level B Harassment – The Navy would establish monitoring zones corresponding with the estimated Level B harassment zones. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential cessation of activity should the animal enter the shutdown zone.

Table 3 -- Monitoring and Shutdown Zones for Each Project Activity

Source	Monitoring Zone (m)	Shutdown Zone (m)
Impact Pile Driving 24-inch octagonal concrete piles	120	25
Impact Pile Driving 18-inch octagonal concrete piles	25	25

Vibratory Pile Driving 14-inch steel H-piles	400	25
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Soft Start - The use of soft-start procedures is believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors would be required to provide an initial set of strikes from the hammer at reduced energy, with each strike followed by a 30-second waiting period. This procedure would be conducted a total of three times before impact pile driving begins. Soft start would be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer. Soft start would not be required during vibratory pile driving activities.

Pre-Activity Monitoring - Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, PSOs would observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone would be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start would not proceed until the animal has left the zone or has not been observed for 15 minutes. If the Level B harassment zone has been observed for 30 minutes and species with no take authorization are not present within the zone, soft start procedures can commence and work can continue even if visibility becomes impaired within the Level B harassment monitoring zone. When a marine mammal for which take by Level B harassment is authorized is present in the Level B harassment zone, activities may begin and Level B harassment take would be recorded. If work ceases for more than

30 minutes, the pre-activity monitoring of both the Level B harassment and shutdown zone would commence again.

Monitoring

Marine Mammal Visual Monitoring – Monitoring would be conducted by NMFS-approved observers. Trained observers would be placed from the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator. Observer training would be provided prior to project start, and would include instruction on species identification (sufficient to distinguish the species in the project area), description and categorization of observed behaviors and interpretation of behaviors that may be construed as being reactions to the specified activity, proper completion of data forms, and other basic components of biological monitoring, including tracking of observed animals or groups of animals such that repeat sound exposures may be attributed to individuals (to the extent possible).

Monitoring would be conducted 30 minutes before, during, and 30 minutes after pile driving activities. In addition, observers would record all incidents of marine mammal occurrence, regardless of distance from activity, and would document any behavioral reactions in concert with distance from piles being driven. Pile driving activities include the time to install a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

At least one land-based PSO would be located at the project site, and the Navy has indicated that when possible and appropriate during vibratory pile driving activities, one additional boat-based PSO would be located at the edge of the Level B harassment

isopleth (see Figure 1-2 of the Marine Mammal Monitoring Plan dated March, 2020; available at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>).

PSOs would scan the waters using binoculars, and/or spotting scopes, and would use a handheld GPS or range-finder device to verify the distance to each sighting from the project site. All PSOs would be trained in marine mammal identification and behaviors and would have no other project-related tasks while conducting monitoring. In addition, monitoring would be conducted by qualified observers, who would be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. The Navy would adhere to the following PSO qualifications:

- (i) Independent observers (*i.e.*, not construction personnel) are required;
- (ii) At least one observer must have prior experience working as an observer;
- (iii) Other observers may substitute education (degree in biological science or related field) or training for experience;
- (iv) Where a team of three or more observers are required, one observer shall be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer; and
- (v) The Navy would submit observer CVs for approval by NMFS.

Additional standard observer qualifications include:

- Ability to conduct field observations and collect data according to assigned protocols;

- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including, but not limited to, the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Observers would be required to use approved data forms (see data collection forms in the applicant's Marine Mammal Mitigation and Monitoring Plan). Among other pieces of information, the Navy would record detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any. In addition, the Navy would attempt to distinguish between the number of individual animals taken and the number of incidences of take.

Reporting

A draft report would be submitted to NMFS within 90 days of the completion of marine mammal monitoring, or 60 days prior to the requested date of issuance of any future IHA for projects at the same location, whichever comes first. The report would

include marine mammal observations pre-activity, during-activity, and post-activity during pile driving days (and associated PSO data sheets), and would also provide descriptions of any behavioral responses to construction activities by marine mammals and a complete description of all mitigation shutdowns and the results of those actions and an extrapolated total take estimate based on the number of marine mammals observed during the course of construction. A final report must be submitted within 30 days following resolution of comments on the draft report. At minimum, the following information must be collected on all sighting forms and included in the monitoring report:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including how many and what type of piles were driven or removed and by what method (*i.e.*, impact or vibratory);
- Weather parameters and water conditions during each monitoring period (*e.g.*, wind speed, percent cover, visibility, sea state);
- The number of marine mammals observed, by species, relative to the pile location and if pile driving or removal was occurring at time of sighting;
- Age and sex class, if possible, of all marine mammals observed;
- PSO locations during marine mammal monitoring;
- Distances and bearings of each marine mammal observed to the pile being driven or removed for each sighting (if pile driving or removal was occurring at time of sighting);

- Description of any marine mammal behavior patterns during observation, including direction of travel and estimated time spent within the Level A and Level B harassment zones while the source was active;
- Number of individuals of each species (differentiated by month as appropriate) detected within the monitoring zone, and estimates of number of marine mammals taken, by species (a correction factor may be applied to total take numbers, as appropriate);
- Detailed information about any implementation of any mitigation triggered (*e.g.*, shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal, if any;
- Description of attempts to distinguish between the number of individual animals taken and the number of incidences of take, such as ability to track groups or individuals;
- An extrapolation of the estimated takes by Level B harassment based on the number of observed exposures within the Level B harassment zone and the percentage of the Level B harassment zone that was not visible; and
- Submit all PSO datasheets and/or raw sighting data (in a separate file from the final report referenced immediately above).

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the Navy would report the incident to the Office of Protected Resources (OPR) (301-427-8401), NMFS and to the West Coast Region Stranding Coordinator (562-980-3230) as soon as feasible. If the death or injury was clearly caused by the specified activity, the Navy would immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of

the IHA. The Navy would not resume their activities until notified by NMFS. The report would include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

NMFS would work with the Navy to determine what, if anything, is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The Navy would not resume their activities until notified by NMFS.

Comments and Responses

As noted previously, NMFS published a notice of a proposed IHA (85 FR 21179, April 16, 2020) and solicited public comments on both our proposal to issue the 2020 IHA for the Navy's proposed activity and on the potential for a renewal IHA, should certain requirements be met.

All public comments were addressed in the notice announcing the issuance of the 2020 IHA (85 FR 33129, June 1, 2020). Below, we describe how we have addressed, with updated information where appropriate, any comments received that specifically pertain to the renewal of the 2020 IHA.

Comment: The Marine Mammal Commission (Commission) recommended that NMFS refrain from issuing renewals for any authorization and instead use its abbreviated

Federal Register notice process, which is similarly expeditious and fulfills NMFS's intent to maximize efficiencies. If NMFS continues to propose to issue renewals, the Commission recommended that it (1) stipulate that a renewal is a one-time opportunity (a) in all **Federal Register** notices requesting comments on the possibility of a renewal, (b) on its webpage detailing the renewal process, and (c) in all draft and final authorizations that include a term and condition for a renewal and, (2) if NMFS declines to adopt this recommendation, explain fully its rationale for not doing so.

Response: NMFS does not agree with the Commission and, therefore, does not adopt the Commission's recommendation. NMFS will provide a detailed explanation of its decision within 120 days, as required by section 202(d) of the MMPA.

Update: Since publication of the **Federal Register** notice of final IHA for the 2020 IHA, NMFS has sent the Commission a letter with detailed responses to their comments and concerns regarding IHA renewals. At the recommendation of the Commission, NMFS has added the "one-time" language to our website and to our templates for both **Federal Register** notices of proposed IHAs and the IHAs themselves.

Preliminary Determinations

The construction activities proposed by the Navy are nearly identical to those analyzed in the initial IHA. Due to the construction design plan changes, the proposed number of days of activity are fewer than the initial IHA. The method of taking and effects of the action are identical to those analyzed in the initial IHA. The potential effects of the Navy's activities are limited to Level B harassment in the form of behavioral disturbance and temporary threshold shift. In analyzing the effects of the activities in the initial IHA, NMFS determined that the Navy's activities would have a

negligible impact on the affected species or stocks and that the authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.*, less than one-third of the abundance of all stocks). The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA.

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) the Navy's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action; and (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. No incidental take of ESA-listed marine mammal species is expected to result from this activity, and none would be authorized. Therefore, NMFS has determined that consultation under section 7 of the ESA is not required for this action.

Proposed Renewal IHA and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue a renewal IHA to the Navy for conducting the Floating Dry Dock Project at Naval Base San Diego in San Diego, California, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed and final 2020 IHA and the reissued initial IHA can be found at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. We request comment on our analyses, the proposed renewal IHA, and any other aspect of this notice. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: September 14, 2022.

Kimberly Damon-Randall,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

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